BEFORE THE WORKERS COMPENSATION APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

FRANCIS A. SHORT	)	
Claimant	)	
V.	)	
	)	
FLOYD WILD, INC.	)	Docket No. 1,050,662
Respondent	)	
AND	)	
	)	
SPARTA INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and insurance carrier (respondent), by and through Thomas Walsh of Kansas City, request review of Administrative Law Judge Brad Avery's August 7, 2014 Post Award Medical Order. Richard Morefield, of Leawood, appeared for claimant. Oral argument was held October 7, 2014.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Post Award Medical Order. The parties agreed all exhibits to the December 9, 2011 preliminary hearing transcript and the April 18, 2013 settlement hearing transcript are part of the record, in addition to the October 17, 2013 settlement hearing transcript in Docket No. 1,058,029. The parties further agreed the Board may consult Gray's Anatomy and Dorland's Illustrated Medical Dictionary, 30th Ed., if necessary, to distinguish between physician diagnoses of upper trapezius injury versus injury to the shoulder girdles, cervical and thoracic paraspinals, thoracic spine, lumbar spine and thoracolumbar spine.

ISSUES

The judge concluded claimant needed additional medical treatment for his January 12, 2010 accidental injury. The judge ordered medical treatment with Dr. Sankoorikal, with the exception of a possible electromyographic study of claimant's upper extremities, which the judge found to be based on new symptoms.

Respondent requests the Post Award Medical Order be reversed, arguing claimant's need for additional medical treatment is not the direct and natural consequence of his January 12, 2010 accidental injury. Respondent contends claimant's need for additional medical treatment is due to an intervening accidental injury after his employment with respondent ended. Claimant maintains the Award should be affirmed.

There is one issue for the Board's review: is claimant entitled to medical treatment due to his January 12, 2010 work-related accidental injury?

FINDINGS OF FACT

On January 12, 2010, claimant, who goes by the name "Ash," was working as a truck driver for respondent when he injured his back and left shoulder. In describing the accident, claimant testified, "I went to open my trailer doors and pallets were leaning against the back doors and they shoved me back and threw me to the ground."[1]

Claimant came under the treatment of Pat Do, M.D., who performed a left shoulder arthroscopy subacromial decompression and rotator cuff repair on June 23, 2010. Following surgery, Dr. Do ordered physical therapy for claimant's shoulder and back.

On September 28, 2010, claimant returned to Dr. Do with complaints of residual soreness and low back pain. Physical examination of the left shoulder revealed tenderness to palpation, slightly decreased strength and decreased range of motion. Dr. Do diagnosed claimant with post left shoulder arthroscopy subacromial decompression and rotator cuff repair, in addition to back pain. As he had nothing further to offer from an orthopedic standpoint, Dr. Do released claimant at maximum medical improvement (MMI) with no permanent work restrictions. Dr. Do noted, "The patient participated in choosing restrictions or lack of restrictions. Pt understands these restrictions or lack of restrictions are permanent. The patient is in agreement."[2] Claimant testified his back pain level in September 2010 was about a five on a 1-10 pain scale.

On October 21, 2010, claimant was seen at his attorney's request by Pedro Murati, M.D., for an independent medical evaluation (IME). Claimant complained of trouble sleeping on the left shoulder, in addition to pinching in the mid back and low back pain radiating into the tail bone. Dr. Murati noted a March 23, 2010 thoracic spine MRI was read to show "evidence of degenerative disk disease and loss of the normal signal in the disk at T7 and T8 levels. There is also mild protrusion."[3]

Upon physical examination, Dr. Murati concluded claimant's left shoulder revealed a positive rotator cuff, positive impingement, no crepitus and decreased range of motion. Neck examination revealed a positive Spurling's exam on the left with trigger points of the left shoulder girdle extending into the thoracic paraspinals. Back examination showed the L5 spinous process was the most tender to palpation with increased tone of the lumbosacral paraspinals. Pelvic compression examination was negative bilaterally. There was a negative SI joint examination bilaterally.

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[1] P.H. Trans. at 7.

[2] *Id.*, Ex. A at 6.

[3] *Id.*, Ex. 1 at 13. The report lists an incorrect date of October 21, 2011 on many pages.

Dr. Murati diagnosed claimant with: (1) myofascial pain syndrome affecting the left shoulder girdle, extending into the thoracic paraspinals; (2) low back pain with signs and symptoms of radiculopathy; (3) left axillary neuropathy; and (4) status post left shoulder arthroscopic subacromial decompression, left shoulder arthroscopic rotator cuff repair and subacromial pain injection for postoperative pain control. Dr. Murati opined "claimant's current diagnoses are within all reasonable medical probability a direct result from the work-related injury that occurred on 01-12-10, during his employment with Floyd Wild Inc."[4]

Dr. Murati recommended a bilateral lower extremity NCS/EMG, physical therapy, medication, injections and possible surgical evaluation. Dr. Murati imposed light duty restrictions of no lifting over 20 pounds occasionally or 10 pounds frequently.

While claimant was recovering from his injuries and surgery, respondent went out of business. After drawing unemployment for about six months, claimant went to work as a roughneck for Hurricane, an oil field company. He testified he lasted two weeks in this physically demanding job, but quit before his symptoms worsened.

On March 2, 2011, claimant went to work for Interstate Brands Corporation (IBC) as a shag driver because he needed to support his family. Claimant was still symptomatic prior to working at IBC, but noted his symptoms had "calmed down just a little bit."[5] His job duties at IBC included driving a one-seat truck and moving trailers around, unhooking air lines, shutting trailer doors, checking oil and air in tires, washing windows and carrying mail in drums weighing in excess of 100 pounds. He performed overhead lifting and climbing.

Claimant testified his back and bilateral shoulder symptoms got continuously worse while working at IBC because of the repetitive work activities. At some point, while trying to clean a semi-tractor window, claimant fell off a tractor wheel. Claimant testified such incident only affected his pain "a little" and he was "already hurting so bad," he "[c]ouldn't tell the difference."[6]

Respondent authorized claimant to return to Dr. Do. On April 18, 2011, claimant complained to Dr. Do that he had pain from his left shoulder to his right shoulder and all the way down his back, pain into his right great toe and occasional pain going to his left elbow. Claimant had left shoulder range of motion deficit. Claimant was slightly tender in the lower thoracic and upper lumbar spine. Dr. Do diagnosed claimant with myofascial thoracolumbar pain and status post left arthroscopic surgery with some residual pain and discomfort. Dr. Do recommended an MRI of the thoracic and lumbar spine, trigger point injections and bilateral lower extremity nerve testing.

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[4] *Id*., Ex. 1 at 15.

[5] *Id*. at 23.

[6] P.A.H. Trans. at 12; see also P.H. Trans. at 30 (claimant reported no difference in his symptoms due to his fall).

In addressing causation, Dr. Do stated, "The things I am currently treating, I think, are related to January 12, 2010 injury."[7] Dr. Do noted claimant was at MMI for his shoulder and very close to MMI for his back. Dr. Do rated claimant as having a 9% impairment for his left shoulder and a 5% rating for his thoracolumbar pain, which combine to be a 10% whole body impairment.

Claimant asked Dr. Do to provide him work restrictions in May 2011. When asking if work restrictions would be appropriate, claimant showed Dr. Do pictures of the work he did at IBC.[8] Claimant testified he asked Dr. Do to provide work restrictions "because [he] was hurting."[9] Dr. Do provided some restrictions, but the record fails to provide any specifics.

Claimant had a thoracic spine MRI on May 18, 2011. Claimant had a right thoracic trigger point injection on May 24, 2011.[10]

Claimant returned to Dr. Do on May 31, 2011. Claimant reported the injection helped and requested that his restrictions be lifted. Claimant testified he would not be allowed to work at IBC with restrictions and he wanted his restrictions lifted so he could return to work for IBC in lieu of being placed on permanent medical leave.[11] Dr. Do's May 31, 2011 letter indicated he gave claimant restrictions because "his current MRI now shows a disc protrusion at T3-T4 . . . ."[12] Nonetheless, Dr. Do granted claimant's request for no restrictions. Claimant returned to work for IBC and testified his physical condition worsened thereafter.

According to Dr. Do's May 31, 2011 letter, when claimant showed him pictures of his work activities, Dr. Do believed they represented his work activities at respondent. After discovering the activities were for claimant's then-current employer, IBC, contrary to Dr. Do's mistaken understanding claimant was still working for respondent, Dr. Do stated, "I am now seriously considering whether his current need for treatment of his back is even entirely related to his January 2010 injury."[13]

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[7] S.H. Trans., Do Report (Apr. 18, 2011) at 3.

[8] P.H. Trans. at 30-31.

[9] *Id*. at 33.

[10] This information is gleaned from Dr. Murati's August 25, 2011 report.

[11] P.H. Trans. at 33.

[12] *Id*., Ex. A at 4.

[13] *Id*., Ex. A at 4.

In a letter addressed to an insurance adjuster dated June 23, 2011, Dr. Do stated:

> As you know, I have been under the recent understanding that his photographs and videos of his current work that he has shown me are not his work activities at Floyd Wild. Because of this, I think he is currently at maximum medical improvement. I think for his work injury sustained on or about January 12, 2010, he is at maximum medial [sic] improvement not needing any further care.
>
> Knowing what I know now that his work activities that he has been showing me on the video and camera phone, I think any further treatment would be more due to activities of his current employment and NOT from Floyd Wild.[14]

On August 25, 2011, claimant returned to Dr. Murati at his attorney's request.[15] Dr. Murati noted claimant had been working for IBC for seven months. Upon physical examination, Dr. Murati found claimant's left shoulder had a negative rotator cuff exam bilaterally and impingement on the left. Claimant still had left shoulder range of motion deficit. Neck examination revealed a negative Spurling's exam on the left, missing right lateral flexion, and trigger points of the left shoulder girdles extending into the cervical and thoracic paraspinals.

Dr. Murati outlined claimant's major job duties and physical requirements:

	Major Job Duties	**Physical Requirements**
Respondent	driving, opening doors, dropping and hooking on the trailer, some maintenance	sitting, standing, pushing, pulling, twisting, climbing, jumping, lifting 70 pounds occasionally and 50 pounds frequently
Interstate Brands Corporation	driver and laborer	pushing, pulling, twisting, washing the windshield, bending, climbing in and out of the truck 3 to 4 times a day, lifting up to 100 pounds occasionally and 70 pounds frequently

Dr. Murati's impressions were: (1) status post left shoulder surgery and injection; (2) myofascial pain syndrome affecting the left shoulder girdle extending into the cervical and thoracic paraspinals; (3) left shoulder strain versus tear; and (4) low back pain with signs and symptoms of radiculopathy, all of which he attributed to claimant's January 12, 2010 accidental injury.

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[14] *Id.*, Ex. A at 3.

[15] This report is correctly dated on page one, but thereafter incorrectly dated "August 25, 2010."

Dr. Murati rated claimant as having a 7% left upper extremity rating based on shoulder range of motion deficit, a 5% whole body impairment for cervical paraspinal myofascial pain syndrome, a 5% whole body impairment for thoracic paraspinal myofascial pain syndrome and a 10% whole body impairment for low back pain with signs and symptoms of radiculopathy. Dr. Murati's combined rating was 21% whole body impairment. Dr. Murati noted claimant should work as tolerated and use common sense.

Claimant stopped working for IBC in September 2011 after he went to an emergency room due to severe muscle spasms that kept him from walking. Claimant testified his work at IBC caused him to nearly collapse. Division records show claimant filed a workers compensation claim against IBC on October 12, 2011.

On November 30, 2011, claimant returned to Dr. Murati at his attorney's request. Dr. Murati indicated claimant was injured at IBC on September 12, 2011, when he was opening trailer doors and pallets of cat food flung him to the ground.[16] Dr. Murati noted claimant was on medical leave due to back spasms and pain. Dr. Murati also recorded claimant's job duties for IBC, similar to those noted in his August 25, 2011 report, except claimant's lifting doubled to 200 pounds occasionally and slightly increased to over 77 pounds frequently. Dr. Murati indicated claimant should work as tolerated and use common sense, but he also restricted claimant against lifting over 20 pounds occasionally or 10 pounds frequently.

Dr. Murati diagnosed claimant with: (1) bilateral contusional carpal tunnel syndrome; (2) aggravation of myofascial pain syndrome affecting the left shoulder girdle extending into the cervical and thoracic paraspinals; and (3) aggravation of low back pain with signs and symptoms of radiculopathy. Dr. Murati's report contained six recommendations. Recommendation no. 2 stated: "This patient's current diagnoses are within all reasonable medical probability a direct result from the work-related injury that occurred on 09-12-11 while working for Interstate Brands."[17] However, recommendation no. 6 stated: "The examinee's current pain, problems and limitations are the result of a combination of injuries, while working for Interstate Brands and Floyd Wild Trucking."[18]

At a December 9, 2011 preliminary hearing, claimant testified his back pain level was close to an 11 on a 1-10 pain scale and his back pain just got gradually worse over time, as did his right shoulder pain, and that his right fingers would get numb. He testified his right shoulder pain was present in September 2010 and also that he had right toe numbness from his 2010 accident forward. Claimant reported falling because his right leg was completely numb after getting out of bed.

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[16] Dr. Murati incorrectly attributed claimant's mechanism of injury at IBC as being the mechanism of injury from claimant's January 12, 2010 accident with respondent.

[17] P.H. Trans., Ex. 1 at 5.

[18] *Id*., Ex. 1 at 6.

Claimant also testified at the preliminary hearing he was forced to go to work for IBC to support his family, even though he was still having left shoulder, slight right shoulder and mid-back pain from his 2010 injury, and even though he had doubt if he would be able to do the physical work for IBC.[19] Claimant testified his pain continuously started to increase when he did repetitious work for IBC. He agreed trigger point injections were not suggested until he was working for IBC. Claimant further agreed his condition was worse and he could no longer return to his work for IBC.

The judge ordered an IME with Terrence Pratt, M.D., regarding whether claimant needed treatment for his January 12, 2010 accidental injury.

Claimant was seen by Dr. Pratt on February 23, 2012. Claimant told Dr. Pratt about his January 12, 2010 accidental injury and about his duties at IBC, including heavy lifting and repetitive climbing, which progressively worsened all of his symptoms.

Dr. Pratt's physical examination of claimant revealed bilateral and palpable cervical and thoracic paraspinous tenderness. Claimant reported back spasms. Claimant had mild shoulder symptoms with impingement and more significant symptoms with apprehension. The posterior aspect of claimant's shoulders were tender to palpation. Claimant's shoulder range of motion was significantly less than prior examinations by other physicians.[20] Dr. Pratt noted claimant had generalized giveaway weakness of the left upper extremity with shaking, and his lower extremities would give way to any resistance bilaterally. Further, Dr. Pratt recorded 4/5 inappropriate responses on Waddell's assessment.

Dr. Pratt summarized claimant's presentation as follows:

> The records document a vocationally related event in January 2010 with thoracic and left knee involvement primarily. He . . . complained of symptoms from the cervical region to the lumbosacral area. He was subsequently noted to have involvement of his left shoulder resulting in operative intervention. He was released from care. Apparently, he had a period of 6 months or more where he was unemployed. He then initiated alternative vocationally related activities. He reports having difficulties with initial employment and only performed those activities for less than 2 weeks. He subsequently initiated activities over a longer duration and reported an increase in all symptoms today.[21]

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[19] See *Id*. at 22-23, 31-32.

[20] Claimant had 85° flexion, 65° abduction and 30° external rotation for Dr. Pratt, but previously had between 140-155° flexion, 120-140° abduction and 60-70° external rotation for Drs. Do and Murati.

[21] P.A.H. Trans., Ex. B at 6.

Dr. Pratt's impressions were: (1) left shoulder syndrome, status post arthroscopic rotator cuff repair and subacromial decompression; and (2) thoracic discomfort with degenerative disc disease and reported T7-8 disc protrusion without significant stenosis, history of low back pain with minimal disc bulging at L4-5.

The "DISCUSSION" section of Dr. Pratt's report stated:

> Based on all of the information, he had complaints when he was released from care but they were more significant after he initiated alternative job tasks. Today of interest, he has inappropriate responses on examination limiting the assessment and also he was not a detailed historian.
>
> In relationship to his left shoulder based on the documentation from Dr. Do, he achieved maximum medical improvement and was released from care after treatment for his 2010 event. He does not have significant lumbosacral involvement that required additional treatment in relationship to his 2010 event. In relationship to right shoulder involvement, there is no significant indication that he has right shoulder involvement that was in need of care in direct relationship to his January 2010 vocationally related event.
>
> I had the opportunity to compare his radiographic studies with reports. His initial thoracic assessment occurred on March 23, 2010, and revealed degenerative disc type changes with a mild protrusion T7-T8 but no stenosis. His subsequent report occurred on May 18, 2011, and this noted mild disc space narrowing at the T7-T8 level with a small right protrusion and a minimal right protrusion at T3-T4. The subsequent MRI noted changes which were not present on the initial. There was a change in the MRI reports noted more than a year after he had discontinued activities for Floyd Wild. I could not recommend any additional active medical care in direct relationship to his reported event on January 12, 2010, and the involvement of his back and shoulders. He is at maximum medical improvement in direct relationship to the January 12, 2010 event.
>
> . . .
>
> In relationship to his active movements of the shoulder on the left, the limitations identified today were not consistent with what was noted in the past. As outlined, I could not consider right shoulder involvement to relate directly to his reported vocationally related event in 2010 other than involvement of the thoracic region. For the left shoulder involvement, he did require a procedure for involvement of his rotator cuff as well as a decompression. With his giveaway weakness and inconsistencies in terms of range of motion, options for assessing him on a functional basis are limited.[22]

[22] *Id*., Ex. B at 6-7.

Dr. Pratt rated claimant as having a 5% whole body thoracolumbar impairment, a 5% whole body lumbosacral impairment and a 15% left upper extremity impairment for his left shoulder, which combine to be an 18% whole body rating.

On March 7, 2012, the judge issued an Order denying medical treatment.

On September 4, 2012, claimant was seen by Edward Prostic, M.D., for a court-ordered independent medical examination in connection with his claim against IBC. Claimant informed Dr. Prostic about his January 12, 2010 injury with respondent and asserted worsening of his symptoms while working for IBC through September 2011.

Dr. Prostic noted claimant's area of greatest concern was his mid back. Claimant had been using a cane for the past month, apparently based on claimant's complaint that his legs would give way. Claimant's left shoulder lacked 20° of forward flexion, but otherwise had satisfactory motion with minimal crepitus. The biceps anchor appeared intact. Impingement signs were negative. There was mild to moderate weakness in all directions with no instability noted. Thoracic and lumbar spine alignment was satisfactory with no tenderness noted. Straight leg raise testing was negative bilaterally. Claimant had no leg weakness, his reflexes were symmetrical and his leg sensation was satisfactory. While claimant reported right shoulder ache, physical examination revealed the right upper extremity was within normal limits. Provocative testing for carpal tunnel syndrome was negative bilaterally.

Dr. Prostic concluded:

> He is reporting aggravation of his shoulders and spine while working for Interstate Brands. There is no objective evidence of permanent injury to either shoulder from the injury at Interstate Brands. He appears to have had aggravation of injury to the thoracic and/or lumbar spine. A surgically correctable lesion has not been located. It is strongly suspected that there are psychological barriers to improvement. On a strictly orthopaedic and objective basis, impairment from the work-related accident at Interstate Brands Corporation is 5 to 10% of the body as a whole on a functional basis. Again on a strictly objective basis, the patient is able to return to medium-level employment.[23]

On October 23, 2012, claimant returned to Dr. Murati at his attorney's request. Claimant complained of constant pain from left to right shoulder, mid back and tail bone, in addition to back spasms, difficulty sleeping, legs giving out and loss of feeling in the tips of his fingers on the right as well as his toes on the right. Dr. Murati noted claimant's job duties for respondent included bending, stooping, pushing, pulling, standing, sitting, grasping, writing, climbing, crouching, kneeling, crawling, driving, reaching and lifting 100 pounds occasionally and 55 pounds frequently (up from 70 and 50 pounds respectively).

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[23] S.H. Trans., Prostic Report (Sep. 4, 2012) at 3.

Dr. Murati's physical examination of claimant's shoulders revealed a negative rotator cuff exam and left shoulder impingement. Claimant had decreased left shoulder range of motion, consistent with findings prior to Dr. Pratt's examination. Neck examination revealed a negative Spurling's exam on the left, missing right lateral flexion, and trigger points of the left shoulder girdles extending into the cervical and thoracic paraspinals.

Dr. Murati diagnosed claimant with: (1) status post left shoulder arthroscopic subacromial decompression, left shoulder arthroscopic rotator cuff repair and subacromial pain injection for postoperative pain control; (2) myofascial pain syndrome of the bilateral shoulder girdles extending into the cervical and thoracic paraspinals; and (3) low back pain with signs of radiculopathy. Dr. Murati attributed claimant's diagnoses as being the direct result of his January 12, 2010 injury while working for respondent. Dr. Murati recommended chronic pain management. Dr. Murati opined claimant was essentially and realistically unemployable and should apply for social security disability benefits.

Dr. Murati rated claimant as having a 17% impairment of the left upper extremity at the level of the shoulder consisting of 10% for his surgery and 8% for lost range of motion, a 5% whole body impairment for cervical paraspinal myofascial pain syndrome, a 5% whole body impairment for thoracolumbar paraspinal myofascial pain syndrome and a 10% whole body impairment for low back pain with signs and symptoms of radiculopathy. Overall, Dr. Murati provided claimant with a 27% whole body impairment.

The instant docketed case was settled on April 18, 2013 for a lump sum payment of $70,000. Respondent had paid $25,994.71 for claimant's medical treatment and $19,820.89 for temporary total disability (TTD) benefits. Claimant's right to future medical treatment was left open.

Claimant filed applications for post award medical on June 21 and 28, 2013.

Claimant settled his claim against IBC on October 17, 2013, for $8,000. He received $1,423.25 in medical treatment and no TTD benefits. All future rights were closed, including future medical treatment.

On December 3, 2013, claimant returned to Dr. Murati at his attorney's request. Claimant complained of right hip and right sided groin pain starting three months ago, increased low back pain, constant pain from the left to right shoulder and mid back and tail bone, back spasms, difficulty sleeping and his legs giving out. Shoulder examination revealed negative rotator cuff exam on the left, impingement of both shoulders and decreased bilateral shoulder range of motion. Neck examination revealed a negative Spurling's exam on the left, missing right lateral flexion, and trigger points of the bilateral shoulder girdles extending into the cervical and thoracic paraspinals with guarding and withdrawal.

Dr. Murati diagnosed claimant with: (1) status post left shoulder arthroscopic subacromial decompression, left shoulder arthroscopic rotator cuff repair and subacromial pain injection for postoperative pain control; (2) right shoulder rotator cuff sprain; (3) myofascial pain syndrome of the bilateral shoulder girdles extending into the cervical and thoracic paraspinals; and (4) low back pain with signs of radiculopathy. Dr. Murati stated claimant's current diagnoses were within all reasonable probability a direct result of his January 12, 2010 accidental injury. It was still Dr. Murati's opinion that claimant was essentially and realistically unemployable.

Dr. Murati recommended lumbar spine and left shoulder MRI scans, physical therapy, medication, injections, possible surgical evaluation and chronic pain management. Dr. Murati noted claimant was a candidate for a spinal cord stimulator.

A post award medical hearing was held on March 21, 2014. Claimant testified:

> Q. Now, sitting here today, is the pain in your shoulder and your back similar in nature or different in nature from the pain you had before the Interstate Brands injury?
>
> A. It's worse. I - - my whole - - my back and my shoulder hurt so bad that my whole body hurts.
>
> Q. Okay. Is - - did your - - did the pain in your shoulder and your back become worse after the Interstate Brands injury?
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> A. It's pretty much the same. It's - - it's just ongoing. I'd hurt so bad before and was on pain medicine that I just couldn't really tell any difference other than casually getting worse as I went on.[24]

The judge ordered an independent medical evaluation with Joseph Sankoorikal, M.D., to determine whether any "palliative care is needed to cure and relieve the effects of a 6/12/10 [sic] accidental injury to claimant."[25]

On May 2, 2014, claimant was seen by Dr. Sankoorikal. Claimant reported a history of pain in the neck, mid and low back, right hip area with numbness in the toes, fingertips, numbness and tingling in his arms and left shoulder pain. Dr. Sankoorikal reviewed medical records and performed a physical examination. Claimant had some low back tenderness. Tinel's sign was positive for the median nerve. Claimant had bilateral shoulder range of motion deficit, consistent with findings other doctors made before Dr. Pratt's examination. Claimant had no wasting of his shoulder muscles, but had upper trapezius trigger points. Claimant's neck revealed no significant tenderness.

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[24] P.A.H. Trans. at 12-13.

[25] ALJ Order (March 25, 2014) at 1.

Dr. Sankoorikal diagnosed claimant with: (1) status post left shoulder arthroscopic subacromial decompression; (2) left rotator cuff repair; (3) history of subacromial pain injection; (4) myofascial pain syndrome involving the upper trapezius; (5) history of low back pain with disc protrusion at T7-8; and (6) parasthesia in the upper extremities.

Dr. Sankoorikal recommended claimant continue using tramadol and Zanaflex as needed, but he should be weaned off oxycodone. Dr. Sankoorikal indicated trigger point injections in claimant's upper trapezius was an option and noted an electromyographic study could be beneficial regarding claimant's arm numbness and tingling. Dr. Sankoorikal stated a functional capacity evaluation and short work hardening program could be beneficial. Dr. Sankoorikal offered no opinion whether his recommendations for further treatment were related to the January 12, 2010 accidental injury. Dr. Sankoorikal's report did not mention claimant's job duties, repetitive work injury or settlement involving IBC.

On August 7, 2014, the judge issued a Post Award Medical Order stating:

> The Court finds the recommended treatment by Dr. Sankoorikal for the effects of claimant's [physical condition] consistent with the subjects of the award made for claimant's January 12, 2010 accidental injury and reasonably necessary to relieve the effects of claimant's injury. Dr. Sankoorikal is appointed to provide treatment with the exception of the doctor's recommendation for a electromyographic study of Mr. Short's upper extremities as the result [of] numbness and tingling in both arms. Those appear to be new symptoms not previously mentioned in the medical records and were not part of injuries which were the subject of the award in this case. Therefore, that aspect of the doctor's recommendations is denied.
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> Dr. Pratt also performed an independent medical examination on behalf of the Court on February 23, 2012. The doctor noted in his examination findings noted "palpable tenderness bilaterally in the paraspinous muscles. He reported back spasms which limited the ability to assess active movements....." The doctor also noted, "His extremities were signficant [sic] for palpable tenderness posterior aspect of his shoulders with mild symptoms with impingement and more significant with apprehension bilaterally." Nevertheless, the doctor stated he could not recommend "any additional active medical care in direct relationship to his reported event on January 12, 2010."
>
> The Court draws a distinction between the recommendation of Dr. Pratt of no additional "active medical care" and that of Dr. Sankoorikal for palliative care to relieve the symptoms of claimant's 2010 accidental injury. (See IME order of 3/25/14). The claimant is at maximum medical improvement for his accident, but Dr. Sankoorikal's recommendations are for care that will relieve Mr. Short's symptoms.[26]

Respondent filed a timely appeal.

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[26] ALJ Order (Aug. 7, 2014) at 2-3.

PRINCIPLES OF LAW

The burden of proof is on claimant to establish his right to an award of compensation.[27] Post-award medical treatment can be awarded if the need for medical care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.[28]

K.S.A. 2009 Supp. 44-510h states in part:

> (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

K.S.A. 2009 Supp. 44-510k states in part:

> (a) At any time after the entry of an award for compensation, the employee may make application for a hearing . . . . The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. . . .

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is compensable. In *Jackson*, the court held:

> When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.[29]

"The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident."[30]

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[27] See K.S.A. 2009 Supp. 44-501(a).

[28] See K.S.A. 2009 Supp. 44-510k(a).

[29] *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 (1972).

[30] *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

In *Logsdon*, the Kansas Court of Appeals noted:

> 1. WORKERS COMPENSATION–*Injury as Direct Result of Primary Injury–Question of Fact*. Whether an injury is a natural and probable result of previous injuries is generally a fact question.
>
> 2. SAME–*Injury as Direct Result of Primary Injury–Subsequent Injury Compensable if Primary Injury Arose Out of and In Course of Employment.* When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.
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> 3. SAME–*Aggravation of Primary Injury for Which Compensation Awarded–Compensation Allowed for Postaward Medical Benefits.* When a claimant's prior injury has never fully healed, subsequent aggravation of that same injury, even when caused by an unrelated accident or trauma, may be a natural consequence of the original injury, entitling the claimant to postaward medical benefits.[31]

"Because Logsdon's prior injury had never fully healed, his aggravation of that same injury by a subsequent non-work-related accident was the natural consequence of his original injury and his postaward injury was compensable."[32] While the direct and natural result rule may be inconsistently applied, "The more straightforward situations are those where a primary injury *itself* causes subsequent further injury to the same or other body parts; in these cases there is usually no "intervening" trauma or accident and the subsequent claim is allowed." (Emphasis in original).[33]

Nance states, "[W]here the passage of time causes deterioration of a compensable injury, the resulting disability is compensable as a direct and natural result of the primary injury."[34] In *Nance*, "there was undisputed testimony that the primary injury had worsened, quite likely through the normal aging process and the passage of time. The worsening of a claimant's compensable injury, absent any intervening or secondary injury, is a natural consequence that flows from the injury. It is a direct and natural result of a primary injury. Since Nance's worsening back condition is merely a continuation of his original injury, causation is not an issue."[35]

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[31] *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 3, 128 P.3d 430 (2006).

[32] *Id.* at 85.

[33] *Id.* at 83.

[34] *Nance v. Harvey County*, 263 Kan. 542, 550, 952 P.2d 411 (1997).

[35] *Nance v. Harvey County*, 23 Kan. App. 2d 899, 909, 937 P.2d 1245, *aff'd*, 263 Kan. 542, 952 P.2d 411 (1997).

ANALYSIS

Claimant is entitled to additional medical treatment.

Highly summarized, respondent argues its responsibility to provide medical treatment for claimant's January 12, 2010 accidental injury was abrogated by, or now caused by, claimant's intervening accidental series of injuries or injury by repetitive trauma that occurred while he worked for IBC through September 2011. Respondent argues Drs. Do and Pratt agreed claimant did not need additional medical treatment after being found to be at MMI. Respondent points out Dr. Murati provided differing causation opinions, while Dr. Sankoorikal did not specifically state claimant's current need for medical treatment was due to the 2010 accidental injury.

Claimant argues he needs medical treatment due to his serious accidental injury occurring on January 12, 2010, not due to what he terms a relatively minor injury on account of his work at IBC. Claimant notes his initial injury required left shoulder surgery and extensive physical therapy for his left shoulder and back, whereas the 2011 injury required only a September 2011 emergency room visit, but no surgery, therapy or active medical treatment. Further, claimant correctly observes Dr. Prostic's conclusion that claimant sustained no permanent worsening of his shoulder injuries from working at IBC. Claimant also argues respondent cannot point to any medical records linking claimant's current need for medical treatment to the 2011 injury.

The Post Award Medical Order does not mention claimant's intervening accidental injury at IBC or Dr. Do's 2011 opinion that claimant's job duties at IBC (as opposed to his 2010 accidental injury for respondent) was the cause for his then-current need for medical treatment. Further, while the order acknowledges Dr. Pratt's opinion that claimant did not need "active" medical treatment for the 2010 accidental injury, it did so only to draw a distinction between "active" medical treatment and "palliative" medical treatment. The order did not address Dr. Pratt's opinion that claimant's work for IBC caused a significant increase in claimant's symptoms after he had been found to be at MMI for the 2010 accidental injury.

The Board concludes claimant is still entitled to ongoing medical treatment as recommended by Dr. Sankoorikal – upper trapezius trigger point injections and medication – as thereafter limited by the judge to exclude the suggested electromyographic study for upper extremity numbness and tingling. We agree with the judge that Dr. Sankoorikal's recommended treatment involving claimant's upper trapezius and medication is consistent with the effects of claimant's original 2010 accidental injury. While the record shows Dr. Sankoorikal is the first doctor to document "trapezius" complaints, his use of such term appears to mirror claimant's complaints associated with the 2010 accidental injury. We base this decision on the following facts:

- Dr. Murati's October 21, 2010 report concerned symptoms in claimant's left shoulder girdle extending into the thoracic paraspinals;

- Dr. Do, on April 18, 2011, noted claimant reported symptoms from the left shoulder to his right shoulder, that he was tender in the lower thoracic and upper lumbar spine and had right toe pain, in addition to some left elbow pain; and

- Dr. Pratt's February 23, 2012 report noted claimant had bilateral, palpable paraspinal cervical and thoracic muscle spasms and his summary indicated claimant complained of symptoms from his cervical region to his lumbosacral area before his left shoulder surgery.

The Board concludes claimant's upper trapezius symptoms that currently require treatment are analogous to symptoms claimant had before his work at IBC.

The Board also finds Dr. Sankoorikal's recommended medical treatment is not due to claimant's repetitive work injuries at IBC. The treatment suggested by Dr. Sankoorikal is separate and distinct from treatment which might arguably be cut off due to claimant's intervening work injury at IBC.

Dr. Prostic indicated in his court-ordered and neutral report that claimant's original injury with respondent involved the lower thoracic spine or the thoracolumbar juncture, in addition to requiring left shoulder surgery. Dr. Prostic noted claimant sustained no permanent aggravation of his shoulders as a result of his work at IBC, but that claimant's work at IBC resulted in apparent aggravation of his thoracic and/or lumbar spine. Dr. Sankoorikal's recommendation for upper trapezius injections and medication is not a recommendation for treatment concerning claimant's thoracic or lumbar spine or for an aggravation of the thoracolumbar junction.

While claimant testified his work at IBC worsened all of his physical conditions, the Board places more credence in Dr. Prostic's opinion than claimant's lay opinion that his IBC employment caused his left shoulder condition to worsen. The medical evidence suggests claimant is prone to some degree of exaggeration. Dr. Prostic noted psychological barriers to recovery and lack of objective medical proof of permanent shoulder worsening due to his work at IBC. Dr. Pratt noted inconsistencies or inappropriate responses on physical examination and claimant not being a detailed historian. Claimant is not a good historian, as he apparently relayed to Dr. Murati the identical mechanism of injury for his claim against both respondent and IBC, even though it only occurred in his claim against respondent. Moreover, the weight of objects claimant purportedly lifted for IBC increased from 100 to 200 pounds in late-2011 reports from Dr. Murati approximately three months apart. Such wildly-varying information presumably came from claimant. Additionally, claimant is not particularly sophisticated, having a third grade reading level, a learning disability and not having completed high school.

Drs. Pratt and Do acknowledged claimant sustained permanent impairment to his left shoulder due to the 2010 injury, as well as permanent impairment due to thoracolumbar and/or lumbosacral involvement. While Drs. Pratt and Do noted claimant had increased symptoms when working for IBC, Drs. Pratt and Do only provided opinions as to whether claimant needed medical treatment due to his 2010 injury when they evaluated claimant in May 2011 and February 2012. Drs. Pratt and Do did not opine claimant would never need any additional medical treatment for his 2010 injury at any time in the future. No doctor opined claimant's current need for medical treatment is due to, or the direct and natural result of, his repetitive work at IBC. Dr. Prostic's opinion is the only evidence regarding whether claimant sustained a permanent worsening of his prior injuries while working for IBC. Absent a permanent worsening, as is arguably the case for an aggravation of the thoracic and/or lumbar spine (or the thoracolumbar junction), it seems claimant's pre-IBC condition returned to its baseline status.

Based on the limited medical treatment suggested by Dr. Sankoorikal, the Board need not address whether claimant's work at IBC, that according to Dr. Prostic resulted in thoracic and/or lumbar spine injury, might terminate respondent's duty to provide claimant medical treatment for that body part or those body parts. Had Dr. Sankoorikal suggested medical treatment for body parts which Dr. Prostic concluded were permanently aggravated, the question would be squarely in front of the Board, but that is not the case.

CONCLUSION

Claimant is entitled to medical treatment as recommended by Dr. Sankoorikal, with the exception of the possible electromyographic study of his upper extremities.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.[36] Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the August 7, 2014 Post Award Medical Award.

IT IS SO ORDERED.

Dated this _____ day of October, 2014.

[36] K.S.A. 2013 Supp. 44-555c(j).

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BOARD MEMBER

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Honorable Brad E. Avery